

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 463 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 4-5-1-11 IS ADDED TO THE INDIANA CODE
- 4 A S A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 5 JULY 1, 2007]: **Sec. 11. The secretary of state may adopt and**
- 6 **enforce rules under IC 4-22-2 that are necessary to carry out:**
- 7 (1) IC 9-23-1;
- 8 (2) IC 9-23-2;
- 9 (3) IC 9-23-3; and
- 10 (4) IC 9-23-6."
- 11 Page 11, between lines 28 and 29, begin a new paragraph and insert:
- 12 "SECTION 13. IC 9-23-0.7 IS ADDED TO THE INDIANA CODE
- 13 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 14 JULY 1, 2007]:
- 15 **Chapter 0.7. Delegation of the Rights, Duties and Obligations of**
- 16 **the Secretary of State**
- 17 **Sec. 1. The secretary of state may delegate any or all of the**
- 18 **rights, duties, or obligations of the secretary of state under this**
- 19 **article to:**
- 20 (1) the securities commissioner appointed under IC 23-2-1-15;
- 21 or
- 22 (2) another designee under the supervision and control of the
- 23 secretary of state.
- 24 **The individual delegated shall have the authority to adopt rules**

1 **pursuant to IC 4-22-2 as the secretary of state under IC 4-5-1-11.**

2 SECTION 14. IC 9-23-1-1 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The motor vehicle  
4 sales advisory board is established to advise the ~~bureau~~ **secretary of**  
5 **state** in the administration of this article.

6 SECTION 15. IC 9-23-1-2 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) The advisory  
8 board is composed of the ~~commissioner~~ **secretary of state** and eight  
9 (8) persons appointed by the governor **upon the recommendation of**  
10 **the secretary of state** as follows:

11 (1) Two (2) of the appointed members must be franchised new  
12 motor vehicle dealers as follows:

13 (A) One (1) member must have sold less than seven hundred  
14 fifty (750) new motor vehicles in the year before the member's  
15 appointment.

16 (B) One (1) member must have sold more than seven hundred  
17 forty-nine (749) new motor vehicles in the year before the  
18 member's appointment.

19 (2) Two (2) of the appointed members must represent the  
20 automobile manufacturing industry and must have been Indiana  
21 residents for a period of two (2) years immediately preceding their  
22 appointment.

23 (3) Two (2) of the appointed members must represent the general  
24 public and may not have any direct interest in the manufacture or  
25 sale of motor vehicles.

26 (4) One (1) member must represent used motor vehicle dealers  
27 that are not franchised new motor vehicle dealers.

28 (5) One (1) member must represent used motor vehicle  
29 auctioneers.

30 (b) Not more than four (4) members of the board may be of the same  
31 political party.

32 SECTION 16. IC 9-23-1-5 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. The ~~commissioner~~  
34 **secretary of state** shall serve as chairman of the advisory board. The  
35 advisory board shall elect a vice chairman and secretary from the  
36 appointed members during the first month of each year. The vice  
37 chairman and secretary serve until their successors are duly appointed  
38 and qualified and may be removed for good cause.

39 SECTION 17. IC 9-23-1-6 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. The advisory board  
41 shall meet during the first month of each year. Additional meetings  
42 may be convened at the call of the ~~commissioner~~ **secretary of state** or  
43 the written request of any three (3) members.

44 SECTION 18. IC 9-23-1-8 IS AMENDED TO READ AS  
45 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The advisory board  
46 is vested with the following powers:

(1) To consult with and advise the ~~bureau~~ **secretary of state**.

(2) To suggest rules, including the following:

(A) The contents of forms.

(B) Methods and procedures for the investigation and evaluation of the qualifications of applicants for licenses.

(C) The criteria upon which to issue, deny, suspend, and revoke licenses.

(D) Procedures for the investigation into and conduct of hearings on unfair practices.

SECTION 19. IC 9-23-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) An application for a license under this chapter must:

(1) be accompanied by the fee required under IC 9-29-8;

(2) be on a form prescribed by the ~~bureau~~ **secretary of state**; and

(3) contain the information the ~~bureau~~ **secretary of state** considers necessary to enable the ~~bureau~~ **secretary of state** to determine fully the following information:

(A) The qualifications and eligibility of the applicant to receive the license.

(B) The location of each of the applicant's places of business in Indiana.

(C) The ability of the applicant to conduct properly the business for which the application is submitted.

(b) An application for a license as a dealer must show whether the applicant proposes to sell new or used motor vehicles, or both.

(c) An applicant who proposes to use the Internet or other computer network in aid of its sale of motor vehicles to consumers in Indiana, which activities may result in the creation of business records outside Indiana, shall provide the division with the name, address, and telephone number of the person who has control of those business records. The ~~bureau~~ **secretary of state** may not issue a license to a dealer who transacts business in this manner who does not have an established place of business in Indiana.

(d) This subsection applies to an application for a license as a dealer in a city having a population of more than ninety thousand (90,000) but less than one hundred five thousand (105,000). The application must include an affidavit from:

(1) the person charged with enforcing a zoning ordinance described in this subsection; or

(2) the zoning enforcement officer under IC 36-7-4, if one exists; who has jurisdiction over the real property where the applicant wants to operate as a dealer. The affidavit must state that the proposed location is zoned for the operation of a dealer's establishment. The applicant may file the affidavit at any time after the filing of the application. However, the ~~bureau~~ **secretary of state** may not issue a license until the applicant files the affidavit.

1       SECTION 20. IC 9-23-2-3 IS AMENDED TO READ AS  
 2       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. A manufacturer,  
 3       distributor, factory branch, distributor branch, or dealer proposing to  
 4       sell new motor vehicles shall file and maintain with the ~~bureau~~  
 5       **secretary of state** a current copy of each franchise to which the person  
 6       is a party, or, if multiple franchises are identical except for stated items,  
 7       a copy of the form franchise with supplemental schedules of variations  
 8       from the form.

9       SECTION 21. IC 9-23-2-4 IS AMENDED TO READ AS  
 10       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) The license  
 11       issued to a factory branch, a distributor branch, an automobile  
 12       auctioneer, a transfer dealer, or a dealer under this chapter must specify  
 13       the location of each place of business and shall be conspicuously  
 14       displayed at each business location.

15       (b) If a business name or location is changed, the holder shall notify  
 16       the ~~bureau~~ **secretary of state** within ten (10) days and remit the fee  
 17       required under IC 9-29-8. The ~~bureau~~ **secretary of state** shall endorse  
 18       that change on the license if the ~~bureau~~ **secretary of state** determines  
 19       that the change is not subject to other provisions of this article.

20       (c) A dealer who uses the Internet or other computer network to  
 21       facilitate the sale of motor vehicles as set forth in section 2(c) of this  
 22       chapter shall notify the ~~bureau~~ **secretary of state** within ten (10) days  
 23       upon any change in the name, address, or telephone number of business  
 24       records located outside Indiana that have been created in transactions  
 25       made in Indiana by the dealer. A report made under this subsection is  
 26       not subject to the fee required under IC 9-29-8-5.

27       (d) This subsection applies to a dealer in a city having a population  
 28       of more than ninety thousand (90,000) but less than one hundred five  
 29       thousand (105,000). A dealer who wants to change a location must  
 30       submit to the ~~bureau~~ **secretary of state** an application for approval of  
 31       the change. The application must be accompanied by an affidavit from:

32               (1) the person charged with enforcing a zoning ordinance  
 33               described in this subsection; or

34               (2) the zoning enforcement officer under IC 36-7-4, if one exists;  
 35       who has jurisdiction over the real property where the applicant wants  
 36       to operate as a dealer. The affidavit must state that the proposed  
 37       location is zoned for the operation of a dealer's establishment. The  
 38       **secretary of state** may not approve a change of location or  
 39       endorse a change of location on the dealer's license until the dealer  
 40       provides the affidavit.

41       (e) For the purpose of this section, an offsite license issued under  
 42       section 7 of this chapter does not constitute a change of location.

43       SECTION 22. IC 9-23-2-5 IS AMENDED TO READ AS  
 44       FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. The license issued  
 45       to a factory representative or distributor representative must state the  
 46       name of the employer. Within ten (10) days after a change of employer,

the holder shall mail the license to the ~~bureau~~ **secretary of state** and indicate the name and address of the holder's new employer. The ~~bureau~~ **secretary of state** shall endorse the change on the license and return the license to the licensee in care of the licensee's new employer. A factory representative, distributor representative, or wholesale dealer must have a license when engaged in business and shall display the license upon request. A temporary license for a factory representative or distributor representative may be issued for a period up to one hundred twenty (120) days pending investigation by the ~~bureau~~ **secretary of state** of the applicant's qualification for a license.

SECTION 23. IC 9-23-2-7, AS AMENDED BY P.L.63-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) Except as provided in subsections (b) through (g), the ~~bureau~~ **secretary of state** shall issue an offsite sales license to a dealer licensed under this chapter who submits an application for the license not later than ten (10) business days or two (2) calendar weeks before the offsite sale date. License applications under this section shall be made public upon the request of any person.

(b) The ~~bureau~~ **secretary of state** may not issue an offsite sales license to a dealer who does not have an established place of business within Indiana.

(c) The ~~bureau~~ **secretary of state** may not issue an offsite sales license to a licensed dealer proposing to conduct the sale outside a radius of twenty (20) miles from its established place of business. This subsection does not apply to:

- (1) new manufactured housing dealers;
- (2) recreational vehicle dealers; or
- (3) a rental company that is a dealer conducting a sale at a site within twenty (20) miles of any of its company owned affiliates.

(d) A vehicle display is not considered an offsite sale if it is conducted by a new vehicle franchised dealer in an open area where no sales personnel and no sales material are present.

(e) The ~~bureau~~ **secretary of state** may not issue an offsite sales license to a licensed dealer proposing to conduct the offsite sale for more than ten (10) calendar days.

(f) As used in this subsection, "executive" has the meaning set forth in IC 36-1-2-5. The ~~bureau~~ **secretary of state** may not issue an offsite sales license to a licensed dealer if the dealer does not have authorization that the offsite sale would be in compliance with local zoning ordinances or other local ordinances. Authorization under this subsection may only be obtained from the following:

- (1) If the offsite sale would be located within the corporate boundaries of a city or town, the executive of the city or town.
- (2) If the offsite sale would be located outside the corporate boundaries of a city or town:
  - (A) except as provided in clause (B), the executive of the

1 county; or  
 2 (B) if the city or town exercises zoning jurisdiction under  
 3 IC 36-7-4-205(b) over the area where the offsite sale would be  
 4 located, the executive of the city or town.

5 (g) The ~~bureau~~ **secretary of state** may not issue an offsite sales  
 6 license to a licensed dealer who has held more than three (3)  
 7 nonconsecutive offsite sales in the year ending on the date of the offsite  
 8 sale for which the current license application is being submitted.

9 (h) The requirements of section 2(c) of this chapter do not apply to  
 10 the application or issuance of an offsite sales license under this section.

11 SECTION 24. IC 9-23-2-11 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. A person who  
 13 ceases a business activity for which a license was issued under this  
 14 chapter shall do the following:

15 (1) Notify the ~~bureau~~ **secretary of state** of the date that the  
 16 business activity will cease.

17 (2) Deliver all permanent dealer license plates and interim license  
 18 plates issued to the person to the bureau within ten (10) days of  
 19 the date the business activity will cease.

20 SECTION 25. IC 9-23-2-13 IS AMENDED TO READ AS  
 21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. Except as provided  
 22 in IC 9-29-1-5, all revenues accruing to the ~~bureau~~ **secretary of state**  
 23 under this article shall be deposited in the motor vehicle highway  
 24 account. All necessary expenses incurred and all compensation paid by  
 25 the ~~bureau~~ **secretary of state** for administering this article shall be paid  
 26 out of funds appropriated from the motor vehicle highway account for  
 27 this purpose.

28 SECTION 26. IC 9-23-2-14, AS AMENDED BY P.L.210-2005,  
 29 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2007]: Sec. 14. (a) A license issued under this chapter may be  
 31 denied, suspended, or revoked for any of the following:

32 (1) Material misrepresentation in the application for the license  
 33 or other information filed with the ~~commissioner~~ **secretary of**  
 34 **state**.

35 (2) Lack of fitness under the standards set forth in this article or  
 36 a rule adopted by the ~~commissioner~~ **secretary of state** under this  
 37 article.

38 (3) Willful failure to comply with the provisions of this article or  
 39 a rule adopted by the ~~commissioner~~ **secretary of state** under this  
 40 article.

41 (4) Willful violation of a federal or state law relating to the sale,  
 42 distribution, financing, or insuring of motor vehicles.

43 (5) Engaging in an unfair practice as set forth in this article or a  
 44 rule adopted by the ~~commissioner~~ **secretary of state** under this  
 45 article.

46 (6) Violating IC 23-2-2.7.

1 Except as provided in subsection (d), the procedures set forth in  
 2 IC 4-21.5 govern the denial, suspension, or revocation of a license and  
 3 a judicial review. A denial, suspension, or revocation of a license takes  
 4 effect after the ~~commissioner~~ **secretary of state** makes a determination  
 5 and notice of the determination has been served upon the affected  
 6 person.

7 (b) If the ~~bureau~~ **secretary of state** denies, suspends, or revokes a  
 8 license issued or sought under this article, the affected person may file  
 9 an action in the circuit court of Marion County, Indiana, or the circuit  
 10 court of the Indiana county in which the person's principal place of  
 11 business is located, seeking a judicial determination as to whether the  
 12 action is proper. The filing of an action as described in this section  
 13 within the thirty (30) day period is an automatic stay of the  
 14 ~~commissioner's~~ **secretary of state's** determination.

15 (c) Revocation or suspension of a license of a manufacturer, a  
 16 distributor, a factory branch, a distributor branch, a dealer, or an  
 17 automobile auctioneer may be limited to one (1) or more locations, to  
 18 one (1) or more defined areas, or only to certain aspects of the business.

19 (d) A license may be denied, suspended, or revoked for violating  
 20 IC 9-19-1. IC 4-21.5-4 governs the denial, suspension, or revocation of  
 21 a license under this subsection. The ~~bureau~~ **secretary of state** may  
 22 issue a temporary order to enforce this subsection.

23 SECTION 27. IC 9-23-2-16, AS ADDED BY P.L.156-2006,  
 24 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2007]: Sec. 16. (a) A person licensed under this article shall  
 26 be issued a special event permit from the ~~bureau~~ **secretary of state** for  
 27 a special event meeting the following conditions:

28 (1) The event is a vehicle auction conducted by auctioneers  
 29 licensed under IC 25-6.1-3.

30 (2) The vehicles to be auctioned are:

31 (A) at least fifteen (15) years old; or

32 (B) classified as classic, collector, or antique vehicles under  
 33 rules adopted by the ~~bureau~~ **secretary of state**.

34 (3) At least one hundred (100) vehicles will be auctioned during  
 35 the special event.

36 (4) An application for a special event permit has been submitted  
 37 to the ~~bureau~~ **secretary of state** not later than thirty (30) days  
 38 before the beginning date of the special event.

39 (5) The application is accompanied by the permit fee required  
 40 under IC 9-29-8-6.5.

41 (b) Not more than two (2) special event permits may be issued by  
 42 the ~~bureau~~ **secretary of state** within a twelve (12) month period to the  
 43 same applicant.

44 SECTION 28. IC 9-23-3-14 IS AMENDED TO READ AS  
 45 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) This section  
 46 does not authorize a manufacturer or distributor and its franchisees in

1 Indiana to establish a uniform hourly labor reimbursement rate  
2 effective for the entire state.

3 (b) It is an unfair practice for a manufacturer or distributor to fail to  
4 compensate to a dealer the posted hourly labor rate for the work and  
5 services the dealer is required to perform in connection with the  
6 dealer's delivery and preparation obligations under any franchise or fail  
7 to compensate to a dealer the posted hourly labor rate for labor and  
8 other expenses incurred by the dealer under the manufacturer's  
9 warranty agreements as long as the posted rate is reasonable. Judgment  
10 of the reasonableness includes consideration of charges for similar  
11 repairs by comparable repair facilities in the local area as well as  
12 mechanic's wages and fringe benefits.

13 (c) A manufacturer or distributor and at least thirty percent (30%)  
14 of its franchisees in Indiana of the same line make may agree in an  
15 express written contract citing this section to a uniform warranty  
16 reimbursement policy to be used by franchisees for the performance of  
17 warranty repairs. The contract must include the reimbursement for  
18 parts used in warranty repairs or the use of a uniform time standards  
19 manual, or both. The allowance for diagnosis within the uniform time  
20 standards manual must be reasonable and adequate for the work and  
21 service to be performed. The manufacturer or distributor shall have:

- 22 (1) only one (1) agreement with each line make; and
- 23 (2) a reasonable and fair procedure for franchisees to request a  
24 modification or adjustment of a standard included in the uniform  
25 time standards manual.

26 (d) A contract described in subsection (c) must meet the following  
27 criteria:

- 28 (1) Establish a uniform parts reimbursement rate that must be  
29 greater than the manufacturer's or distributor's nationally  
30 established parts reimbursement rate in effect at the time the  
31 contract becomes effective. A subsequent contract must include  
32 a uniform reimbursement rate that is equal to or greater than the  
33 rate in the immediately prior contract.
- 34 (2) Apply to all warranty repair orders written while the  
35 agreement is in effect.
- 36 (3) At any time during the period the contract is in effect:
  - 37 (A) be available to any franchisee of the same line make as the  
38 franchisees who entered into the contract with the  
39 manufacturer or distributor; and
  - 40 (B) be available to the franchisee of the same line make on the  
41 same terms as apply to the franchisees who entered into the  
42 contract with the manufacturer or distributor.
- 43 (4) Be for a term not to exceed three (3) years.
- 44 (5) Allow any party to the uniform warranty reimbursement policy  
45 to terminate the policy with thirty (30) days prior written notice  
46 to all parties upon the annual anniversary of the policy, if the



policy is for at least one (1) year.

(6) Remain in effect for the entire life of the original period if the manufacturer and at least one (1) franchisee remain parties to the policy.

(e) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) may only seek to recover its costs from a franchisee that receives a higher reimbursement rate, if authorized by law, subject to the following:

(1) Costs may be recovered only by increasing invoice prices on new vehicles received by the franchisee.

(2) A manufacturer or distributor may make an exception for vehicles that are titled in the name of a purchaser in another state. However, price increases imposed for the purpose of recovering costs imposed by this section may vary from time to time and from model to model and must apply uniformly to all franchisees of the same line make that have requested reimbursement for warranty repairs at a level higher than provided for in the agreement.

(f) A manufacturer or distributor that enters into a contract with its franchisees under subsection (c) shall do the following:

(1) Certify to the ~~bureau~~ **secretary of state** under oath, in a writing signed by a representative of the manufacturer or distributor, that at the time the contract was entered into at least thirty percent (30%) of the franchisees of the line make were parties to the contract.

(2) File a copy of the contract with the bureau at the time of the certification.

(3) Maintain a file that contains the information upon which the certification required under subdivision (1) is based for three (3) years after the certification is made.

SECTION 29. IC 9-23-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. A person who violates this article or a rule or order of the ~~bureau~~ **secretary of state** issued under this article is subject to a civil penalty of not less than fifty dollars (\$50) and not more than one thousand dollars (\$1,000) for each day of violation and for each act of violation, as determined by the court. All civil penalties recovered under this article shall be paid to the state **and deposited into the securities division enforcement account established under IC 23-2-1-15(c).**

SECTION 30. IC 9-23-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. In addition to the penalty imposed under section 4 of this chapter, the bureau may revoke, **upon request of the secretary of state**, a dealer permanent or interim license plate that was issued to the violator.

SECTION 31. IC 9-23-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. Whenever a person

violates this article or a rule or order of the ~~bureau~~ **secretary of state** issued under this article, the ~~bureau~~ **secretary of state** may institute a civil action in any circuit or superior court of Indiana for injunctive relief to restrain the person from continuing the activity or for the assessment and recovery of the civil penalty provided in section 4 of this chapter, or both.

SECTION 32. IC 9-23-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. At the request of the ~~bureau~~, **secretary of state**, the attorney general shall institute and conduct an action in the name of the state for:

- (1) injunctive relief or to recover the civil penalty provided by section 4 of this chapter;
- (2) the injunctive relief provided by section 6 of this chapter; or
- (3) both."

Page 27, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 53. IC 9-29-8-7, AS AMENDED BY P.L.156-2006, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. All money collected by the ~~bureau~~ **secretary of state** from manufacturers, factory branches, distributors, distributor branches, dealers, automobile auctioneers, factory representatives, distributor representatives, wholesale dealers, transfer dealers, converter manufacturers, or brokers for licenses and permit fees under IC 9-23-2 shall be credited to the motor vehicle odometer fund and allocated under IC 9-29-1-5."

Page 36, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 61. IC 23-2-1-15, AS AMENDED BY P.L.48-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 15. (a) This chapter shall be administered by a division of the office of the secretary of state. The secretary of state shall appoint a securities commissioner who shall be responsible for the direction and supervision of the division and the administration of this chapter under the direction and control of the secretary of state. The salary of the securities commissioner shall be paid out of the funds appropriated for the administration of this chapter. The commissioner shall serve at the will of the secretary of state.

(b) The secretary of state:

- (1) shall employ a chief deputy, a senior investigator, a senior accountant, and other deputies, investigators, accountants, clerks, stenographers, and other employees necessary for the administration of this chapter; and
- (2) shall fix their compensation with the approval of the budget agency.

The chief deputy, other deputies, the senior investigator, and the senior accountant, once employed under this chapter, may be dismissed only for cause by the secretary of state upon ten (10) days notice in writing stating the reasons for dismissal. Within fifteen (15) days after

dismissal, the chief deputy, other deputies, the senior investigator, and the senior accountant may appeal to the state personnel board. The state personnel board shall hold a hearing, and if it finds that the appealing party was dismissed for a political, social, religious, or racial reason, the appealing party shall be reinstated to the appealing party's position without loss of pay. In all other cases, if the decision is favorable to the appealing party, the secretary of state shall follow the findings and recommendations of the board, which may include reinstatement and payment of salary or wages lost. The hearing and any subsequent proceedings or appeals shall be governed by the provisions of IC 4-15-2 and IC 4-21.5.

(c) Fees and funds of whatever character accruing from the administration of this chapter shall be accounted for by the secretary of state and shall be deposited with the treasurer of state to be deposited by the treasurer of state in the general fund of the state. Expenses incurred in the administration of this chapter shall be paid from the general fund upon appropriation being made for the expenses in the manner provided by law for the making of those appropriations. However;

**(1) the costs of investigations recovered under sections 16(d) and 17.1(c) of this chapter; and**

**(2) civil penalties recovered under IC 9-23-6-4;**

shall be deposited with the treasurer of state to be deposited by the treasurer of state in a separate account to be known as the securities division enforcement account. The funds in the account shall be available, with the approval of the budget agency, to augment and supplement the funds appropriated for the administration of this chapter. The funds in the account do not revert to the general fund at the end of any fiscal year.

(d) In connection with the administration and enforcement of the provisions of this chapter, the attorney general shall render all necessary assistance to the securities commissioner upon the commissioner's request, and to that end, the attorney general shall employ legal and other professional services as are necessary to adequately and fully perform the service under the direction of the securities commissioner as the demands of the securities division shall require. Expenses incurred by the attorney general for the purposes stated in this subsection shall be chargeable against and paid out of funds appropriated to the attorney general for the administration of the attorney general's office.

(e) Neither the secretary of state, the securities commissioner, nor an employee of the securities division shall be liable in their individual capacity, except to the state, for an act done or omitted in connection with the performance of their respective duties under this chapter.

(f) The commissioner, subject to the approval of the secretary of state, may adopt rules, orders, and forms necessary to carry out this

chapter, including rules and forms concerning registration statements, applications, reports, and the definitions of any terms if the definitions are consistent with this chapter. The commissioner may by rule or order allow for exemptions from registration requirements under sections 3 and 8 of this chapter if the exemptions are consistent with the public interest and this chapter.

(g) The provisions of this chapter delegating and granting power to the secretary of state, the securities division, and the securities commissioner shall be liberally construed to the end that:

- (1) the practice or commission of fraud may be prohibited and prevented;
- (2) disclosure of sufficient and reliable information in order to afford reasonable opportunity for the exercise of independent judgment of the persons involved may be assured; and
- (3) the qualifications may be prescribed to assure availability of reliable broker-dealers, investment advisers, and agents engaged in and in connection with the issuance, barter, sale, purchase, transfer, or disposition of securities in this state.

It is the intent and purpose of this chapter to delegate and grant to and vest in the secretary of state, the securities division, and the securities commissioner full and complete power to carry into effect and accomplish the purpose of this chapter and to charge them with full and complete responsibility for its effective administration.

(h) It is the duty of a prosecuting attorney, as well as of the attorney general, to assist the securities commissioner upon the commissioner's request in the prosecution to final judgment of a violation of the penal provisions of this chapter and in a civil proceeding or action arising under this chapter. If the commissioner determines that an action based on the securities division's investigations is meritorious:

- (1) the commissioner or a designee empowered by the commissioner shall certify the facts drawn from the investigation to the prosecuting attorney of the judicial circuit in which the crime may have been committed;
- (2) the commissioner and the securities division shall assist the prosecuting attorney in prosecuting an action under this section, which may include a securities division attorney serving as a special deputy prosecutor appointed by the prosecuting attorney;
- (3) a prosecuting attorney to whom facts concerning fraud are certified under subdivision (1) may refer the matter to the attorney general; and
- (4) if a matter has been referred to the attorney general under subdivision (3), the attorney general may:
  - (A) file an information in a court with jurisdiction over the matter in the county in which the offense is alleged to have been committed; and
  - (B) prosecute the alleged offense.

1 (i) The securities commissioner shall take, prescribe, and file the  
 2 oath of office prescribed by law. The securities commissioner, the chief  
 3 deputy commissioner, and each attorney or investigator designated by  
 4 the commissioner are police officers of the state and shall:

5 (1) have all the powers and duties of police officers in making  
 6 arrests for violations of this chapter, or in serving any process,  
 7 notice, or order connected with the enforcement of this chapter by  
 8 whatever officer or authority or court issued; and

9 (2) comprise the enforcement department of the division;  
 10 and are considered a criminal justice agency for purposes of IC 5-2-4  
 11 and IC 10-13-3.

12 (j) The securities commissioner and each employee of the securities  
 13 division shall be reimbursed for necessary hotel and travel expenses  
 14 when required to travel on official duty. Hotel and travel  
 15 reimbursements shall be paid in accordance with the travel regulations  
 16 prescribed by the budget agency.

17 (k) It is unlawful for the secretary of state, the securities  
 18 commissioner, or the securities division's employees to use for personal  
 19 benefit information that is filed with or obtained by the securities  
 20 division and that is not made public. No provision of this chapter  
 21 authorizes the secretary of state, the securities commissioner, or the  
 22 employees of the securities division to disclose information except  
 23 among themselves, or when necessary or appropriate, in a proceeding  
 24 or investigation under this chapter. No provision of this chapter either  
 25 creates or derogates from a privilege that exists at common law or  
 26 otherwise when documentary or other evidence is sought under a  
 27 subpoena directed to the secretary of state, the securities commissioner,  
 28 or the securities division or its employees.

29 (l) The commissioner may honor requests from interested persons  
 30 for interpretative opinions and from interested persons for  
 31 determinations that the commissioner will not institute enforcement  
 32 proceedings against specified persons for specified activities. A  
 33 determination not to institute enforcement proceedings must be  
 34 consistent with this chapter. A person may not request an interpretive  
 35 opinion concerning an activity that:

36 (1) occurred before; or

37 (2) is occurring on;

38 the date that the opinion is requested. The commissioner shall charge  
 39 a fee of one hundred dollars (\$100) for an interpretative opinion or  
 40 determination."

41 Page 37, between lines 20 and 21, begin a new paragraph and insert:  
 42 "SECTION 64. [EFFECTIVE JULY 1, 2007] **The rules adopted by**  
 43 **the bureau of motor vehicles before July 1, 2007, concerning:**

44 (1) IC 9-23-1;

45 (2) IC 9-23-2;

46 (3) IC 9-23-3; and

- 1           **(4) IC 9-23-6;**
- 2           **are considered, after June 30, 2007, rules of the secretary of state."**
- 3           Renumber all SECTIONS consecutively.  
            (Reference is to ESB 463 as printed April 6, 2007.)

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Representative Austin